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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re FACEBOOK BIOMETRIC
INFORMATION PRIVACY LITIGATION

This Document Relates To:

ALL ACTIONS.

) Master File No. 3:15-cv-03747-JD

) PLAINTIFFS' EVIDENTIARY
) OBJECTIONS AND RESPONSES TO
) DOCUMENTS SUBMITTED IN SUPPORT
) OF DEFENDANT'S PRE-HEARING BRIEF

1 Plaintiffs respectfully submit these Evidentiary Objections and Responses to Documents
 2 Submitted in Support of Defendant's Pre-Hearing Brief.¹

3 **A. Declarations**

4 Plaintiffs object to the introduction of the Declaration of Joachim De Lombaert in support of
 5 Facebook Inc.'s Prehearing Brief (Dkt. No. 96-8) as it fails to set forth adequate foundation or a
 6 basis for conclusions it asserts and fails to authenticate electronically generated business records.
 7 Specifically, the De Lombaert Declaration never provides any basis of his purported "experience"
 8 and training forming the foundation for the conclusions drawn in the Declaration, particularly with
 9 respect to the electronic evidence on which it relies. For example, the De Lombaert Declaration
 10 never describes the source code records that he reviewed, or how they were kept or maintained by
 11 Facebook. *See In re Vee Vinhnee*, 336 B.R. 437 (9th Cir. B.A.P. 2005). Nor does De Lombaert
 12 describe or explain the source code that he reviewed related to the Facebook Mobile telephone sign-
 13 up process available in 2008 and 2009 (*see* ¶30),² much less how that code currently exists or is kept
 14 by Facebook. *Id.*; Federal Rule of Evidence 803(6), 901(b)(9), 902(11).

15 The De Lombaert Declaration also states that he consulted HTML and Java and PHP code in
 16 forming his conclusions and that based upon that review he "verified" that certain electronic
 17 documents submitted in connection with Facebook's Pre-Hearing Brief were "accurate depictions"
 18 of the sign-up screens of the time that plaintiff signed up. *See, e.g.*, ¶¶14, 22. However, the De
 19 Lombaert Declaration never explains or describes his process of verification. In addition,
 20 De Lombaert declares that he did a "related investigation" into his review of the source code to
 21 review and make determinations into what was available as part of the sign-up process for 2008 but
 22 never describes that process.

23
 24
 25
 26 ¹ Although evidentiary objections are typically contained within opposition briefs per Northern
 27 District of California Civil Local Rule 7-3, the Court ordered simultaneous briefing. *See* Dkt. No.
 83.

28 ² All paragraph references are to the De Lombaert Declaration.

	Defendant's Evidence Submitted in Support of Pre-Hearing Brief	Description	Plaintiffs' Evidentiary Objection
1.	N/A	Plaintiff Carlos Licata's Notice of Rule 30(b)(6) Deposition of Defendant Facebook, Inc.	No objection.
2.	N/A	Defendant Facebook, Inc.'s Rule 26(a)(1) Initial Disclosures	No objection.
3.	FBBIPA_00000043-00000294	Facebook business records re Adam Pezen	No objection.
4.	FBBIPA_00000295-00000327	Facebook business records re Carlo Licata	No objection.
5.	FBBIPA_00000328-00000690	Facebook business records re Nimesh Patel	No objection.
6.	FBBIPA_00000709	August 22, 2005 sign-up screen screenshot	Lacks authenticity FRE 901; violates best evidence rule.
7.	N/A	Plaintiff Carlos Licata's Notice of Rule 30(b)(6) Deposition of Defendant Facebook, Inc.	No objection.
8.	FBBIPA_00000026-00000029	Terms of Use (June 28, 2005)	No objection.
9.	FBBIPA_00000030-00000042	Terms of Use (November 15, 2007)	No objection.
10.	FBBIPA_00000012-00000019	Statement of Rights and Responsibilities (August 28, 2009)	No objection.
11.	FBBIPA_00000020-00000025	Statement of Rights and Responsibilities (January 30, 2015)	No objection.
12.	FBBIPA_00000705-00000709; 00000713	Screenshots of Facebook registration	Lacks authenticity FRE 901; violates best evidence rule.
13.	FBBIPA_00000714	Screenshot of Facebook registration	Lacks authenticity FRE 901; violates best evidence rule.
14.	FBBIPA_00000328-00000431	Facebook business records re Nimesh Patel (excerpt)	No objection.
15.	N/A	Plaintiffs' Responses and Objections to Defendants' First Set of Requests for Production	No objection.
16.	FBBIPA_00000705	Screenshot of Facebook registration (Variant 1 of February 11, 2008 sign-up screen)	Lacks authenticity FRE 901; violates best evidence rule.
17.	FBBIPA_00000714	Screenshot of Facebook registration (Variant 2 of February 11, 2008 sign-up screen)	Lacks authenticity FRE 901; violates best evidence rule.
18.	FBBIPA_00000004	November 21, 2012 email to M. Pike re proposed changes to SRR	Irrelevant; hearsay; lacks authenticity FRE 901; violates best evidence rule.
19.	FBBIPA_00000005	December 5, 2012 email to M. Pike re close of comment period on proposed changes to SRR	Irrelevant; hearsay; lacks authenticity FRE 901; violates best evidence rule.
20.	FBBIPA_00000006	August 30, 2013 email to M. Pike re proposed changes to SRR	Irrelevant; hearsay; lacks authenticity FRE 901; violates best evidence rule.
21.	FBBIPA_00000710-00000712	December 20, 2014 email to M. Pike re proposed changes to SRR	Irrelevant; hearsay; lacks authenticity FRE 901; violates best evidence rule.

	Defendant's Evidence Submitted in Support of Pre-Hearing Brief	Description	Plaintiffs' Evidentiary Objection
22.	N/A	Stipulation to Transfer of Venue	Irrelevant
23.	FBBIPA_00000708	Screenshot of Facebook registration (Screen 1 of November 13, 2009 two- step sign-up screen)	Lacks authenticity FRE 901; violates best evidence rule.
24.	FBBIPA_00000707	Screenshot of Facebook registration (Screen 2 of November 13, 2009 two- step sign-up screen)	Lacks authenticity FRE 901; violates best evidence rule.
25.	FBBIPA_00000693	Screenshot of Facebook registration ("CAPTCHA" challenge sign-up screen, August 2009)	Lacks authenticity FRE 901; violates best evidence rule.
26.	FBBIPA_00000012- 00000019	Statement of Rights and Responsibilities (August 28, 2009)	No objection.
27.	FBBIPA_00000295- 00000327	Facebook business records re Carlo Licata	No objection.
28.	FBBIPA_00000709	Screenshot of Facebook registration (August 22, 2005 sign-up screen)	Lacks authenticity FRE 901; violates best evidence rule.
29.	FBBIPA_00000026- 00000029	Terms of Use (June 28, 2005)	No objection.
30.	FBBIPA_00000043- 00000294	Facebook business records re Adam Pezen	No objection.
31.	FBBIPA_00000704	Video of Facebook registration (November 13, 2009 two-step sign-up screen)	Lacks authenticity FRE 901; violates best evidence rule.

DATED: March 1, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 1, 2016.

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Mailing Information for a Case 3:15-cv-03747-JD In re Facebook Biometric Information Privacy Litigation

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